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SERIAL NUMBER 10/805,418

TO: PATENT EXAMINER DENNIS PEDDER, ART GROUP 3612 FAX: 703-872-9306.  
SUPERVISOR GLENN DAYOAN, ART GROUP 3612

FROM: ROBERT SCHLESINGER, PTO REG.NO.29,852

RE: PATENT APPLICATION SERIAL NUMBER 10/805,418 (VEJNAR).

DATE: JANUARY 3, 2005

Dear Sirs,

Yesterday, I received Examiner Pedder's communication regarding my Response to First Office Action in the above-identified case. In his communication, Examiner Pedder stated in item 1 of page 2 that said Response was not fully responsive, due to my presentation of the amended claims. In his communication, Examiner Pedder further stated that since the statutory period now expired on this application, it has become abandoned and that a Notice to that effect will follow.

The Applicant and undersigned did clearly file the Response in good faith and anticipating a favorable action from the Examiner. The Examiner did not make any calls to the undersigned's office or provide the undersigned with an opportunity to correct or respond to the Examiner's alleged deficiencies in the Response. Typically when there is a perceived deficiency or lack of compliance in a Response, the Examiner will properly allow the patent practitioner an opportunity to correct or comply with the Examiner's requirements, or to respond. I have seen such courtesy extended to patent practitioners

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even when the statutory period has expired. I have also seen such matters properly and expeditiously handled with a telephone call from the Examiner and an Examiner's Amendment. There are a variety of ways to handle this sort of matter without resorting to abandonment of the patent application and the Petitions, etc., associated with it. Patent prosecution should not be reduced to smoke and mirrors and petty procedural gimmicks to kill a patent on a technicality.

The Response clearly stated multiple times, making it unmistakably clear that that all claims were cancelled except the eight (8) claims currently amended and pending in the case. It should also be quite obvious to any reader that the claims were re-drafted in good faith to comport with the Examiner's requests in his First Office Action.

It might be suggested that had the Examiner afforded the Applicant the aforementioned rights and courtesies, it may invalidate any issuing patent. This seems far-fetched, as it is not easy to invalidate a patent, particularly on such petty procedural grounds. The patents of Irwin "Chip" Siegel come to mind when considering potential invalidity based on patent prosecution. I had been employed to study the file wrappers, and study litigation counsel's babbling opinion letters about numerous late filings and other trivial issues, including at least one apparently unresolved matter, but in the final analysis, the patents were held valid and the nit-picking with the file wrapper was of absolutely no significance, even though the Siegel file wrappers were a mess, and with unresolved matters. The technical issues in the present case pale in comparison to matters overlooked or otherwise resolved in the prosecution of other patent applications.

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I am requesting that you withdraw your latest and above-identified communication, and your holding of abandonment, and please take action on the patent application that would not cause it to go into abandonment, but allow it to proceed expeditiously.

My Response was filed in a timely manner, although it was at the conclusion of the statutory period, and for legitimate reason. E.g., the Applicant had become disabled in a construction accident where he had been a welder, and he had been largely unavailable due to recovery and doctors visits, and his more than full-time training for two new occupations (simultaneously). One of these new occupations required (and continues to require) full-time travel for the apprenticeship (as a real estate appraiser trainee), and this travel is often also on weekends. The Applicant also had several commitments requiring trips to Alaska, Virginia, and other destinations on the East Coast. There are often legitimate reasons why there are delays and difficulties coordinating schedules, especially during these times of more widely used transportation.

Thank you for your consideration.

Respectfully submitted,



Robert Schlesinger, PTO Reg. No. 29,852

Robert Schlesinger

7289 Meadowlark Place

Rancho Cucamonga, CA 91701

Phone: (909)-980-9540

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